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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. GREEN UNITED, LLC, et al., Defendants.	**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANTS GREEN UNITED, LLC AND WRIGHT W. THURSTON AND RELIEF DEFENDANTS TRUE NORTH UNITED INVESTMENTS, LLC AND BLOCK BROTHERS, LLC TO DISMISS PLAINTIFF'S COMPLAINT** Case No. 2:23-cv-00159-BSJ

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

As ordered by the Court at the September 8, 2023 oral argument on Defendants' motion to dismiss, Defendant Green United, LLC provides the following supplemental memorandum to respond to the following questions posed by the Court:

(1) What is the Green Box?

(2) What is the software sold with the Green Box?

(3) What else, if anything, was sold to purchasers?

This supplemental memorandum provides brief answers to these three questions, followed by a more in-depth explanation.

BRIEF ANSWERS TO THE COURT'S QUESTIONS

(1) The Green Box is a computer. However, it is much more powerful than a typical home computer. In fact, a Green Box is approximately 140,000 times more powerful than a home computer. Home computers are able to do many different operations, but do them relatively slowly. The Green Box is a specialized computer that can do specific tasks extremely fast. The Green Box is specifically designed to "mine" Bitcoin. This will be explained in more detail below.

A Green Box

Green Boxes running in a data center

(2) Each Green Box connected with software called a Green Node. This software served four functions. First, the software retrieved recorded and verified Bitcoin transactions. Second, the software linked to a network of computers that communicated stored information about Bitcoin transactions. Third, the software recorded the electric power consumed by that specific Green Box in connection with Bitcoin mining. Fourth, the software connected to a protocol that generated and distributed digital currency to the owners of the Green Boxes that mined Bitcoin. This will be explained in more detail below.

(3) Green United sold nothing else to purchasers. Purchasers of Green Boxes and Green Nodes did not receive any ownership interest in Green United. They did not receive any rights to the profits, cash flow, or assets of Green United or any other entity. Section 8.1 of the Terms and Conditions associated with all Green Box sales states: "License of a Green Soft Node or ownership of a Green Box or use of Green Services does not represent or constitute any ownership right or stake, share or security, debt or equivalent right, or any right to receive any future revenue or form of participation in or relating to any blockchain or cryptocurrency, including the green Blockchain or GREEN reward." Customers of Green United purchased the computer and its accompanying software – nothing more.

However, purchasers of Green Boxes who did not want to store and power the Green Boxes themselves had the option to use a third party to "host" the Green Boxes. The hosting services included: (a) taking physical possession of the Green Boxes, (b) setting up the Green Boxes,[1] (c) operating the Green Boxes, and (d) maintaining the Green Boxes in good working order. The primary components of operating and maintaining the Green Boxes were plugging them in to

[1] As part of setting up the Green Boxes, they could be set up for the purchaser to receive Bitcoin or Green Rewards. In addition, purchasers could later switch between receiving Bitcoin or Green Rewards.

electricity in a location with low electricity costs and keeping the Green Boxes from overheating. In light of the enormous electricity usage of these Green Boxes, keeping electricity costs low was important to obtaining virtual currency worth more than the cost spent to obtain it. Managing the temperature of the Green Boxes was important because such high-powered computers generate tremendous amounts of heat and could cease to function if not sufficiently cooled.

A BRIEF EXPLANATION OF BLOCKCHAIN TECHNOLOGIES

To better understand what Green Boxes and Green Nodes do, it is helpful to have a basic understanding of the underlying technology from which they arise: blockchain.[2]

On October 31, 2008, Satoshi Nakamoto (presumed to be a pseudonym) published a paper titled *Bitcoin: A Peer-to-Peer Electronic Cash System*. This paper describes a method for generating, distributing, and trading a digital currency that is not controlled or backed by any government and does not require the use of banks as intermediaries. The currency was named Bitcoin. Bitcoin is a purely digital currency.[3] Because Bitcoin does not physically exist (in the form of metal coins or paper bills), Nakamoto developed new technologies to: (1) generate Bitcoin electronically; (2) keep track of who owns Bitcoin at any given time; (3) provide security for the system; and (4) permit transactions with Bitcoin. Digital currencies such as Bitcoin and other currencies using similar technology are known by a variety of names, such as virtual currencies, cryptocurrencies, and digital assets.

[2] An in-depth explanation of the underlying technology is beyond the scope of responding to this Court's questions.

[3] The SEC has acknowledged that Bitcoin is not a security. https://www.investopedia.com/news/sec-chair-says-bitcoin-not-security/

Bitcoin Generation – The Protocol

Bitcoin is generated by computer programs that began operating in January 2009, and those programs can continue to run automatically and indefinitely without the need for a centralized person or entity to undertake any manual processes. The programs utilize a "protocol" (a specific sequence of programmed steps) that generates a specified amount of Bitcoin every 10 minutes.

Bitcoin Recordkeeping – The Blockchain: a digital ledger that stores information

In order to record who has Bitcoin and to ensure that people cannot use Bitcoin that they do not have or have already spent (the so-called "double spend" problem that applies to digital currencies like Bitcoin), Satoshi Nakamoto created a computer technology called blockchain. A blockchain is a secure, computerized ledger that stores information and exists only electronically. The Bitcoin blockchain is a ledger that records Bitcoin ownership and transactions (whereas other blockchains store information about other digital assets). The Bitcoin blockchain has recorded who has owned every Bitcoin and every Bitcoin transaction since the creation of Bitcoin in 2009.[4] Bitcoin transactions are grouped into blocks of information. Each new block represents an update to the blockchain ledger. The blocks of information link together to form a continuous chain of electronic data (hence the name of the technology – "blockchain").

The blockchain technology created for Bitcoin can be used to store other types of information. In fact, 81 of the 100 largest companies in the world (including IBM, Amazon, Microsoft, Home Depot, American Express, and Walmart) currently use blockchain technology to store information.

[4] Owners of Bitcoin are typically identified not by their own name, but rather by an identifier called a key. This identifier is usually a long string of numbers and letters – much like a complex, randomly generated computer password.

Bitcoin Security

For people to trust the accuracy of the Bitcoin blockchain, the system needs security to prevent people from tampering with the information stored on the blockchain. Thus, records of Bitcoin transactions are encoded. Those transaction records need to be verified for the new block of information to be added to the chain. Verifying and recording the transactions requires (1) a computer (or "miner"), and (2) software (or "nodes") linking that computer to the Bitcoin network (so the computer receives the encoded transactions to verify and record). To provide an incentive for people to donate their computer power to verify and record the transactions, the first computer to successfully record each message receives Bitcoin as a reward. This process is called "proof of work," which is one form of "mining."[5] The miners who win the recording race are the ones who receive the Bitcoin generated by the protocol every 10 minutes.

Each time the recording race is completed, the new transactions are grouped in a block that is added to the blockchain. All computers carrying a copy of the Bitcoin ledger are simultaneously updated with the new block showing the most up-to-date version of the ledger.

Verifying a new Bitcoin transaction is similar to conducting a title search on real estate. Before people buy real estate they want to ensure that the seller has good title to the property. Thus, they conduct a search of the records of all prior owners and transactions involving that property. Because the Bitcoin blockchain contains a record of all prior owners and transactions involving Bitcoin, it can be reviewed similar to land title records to ensure that the people selling Bitcoin actually have good title to that Bitcoin. For purposes of this analogy, computers recording Bitcoin transactions are like the people who go to the county clerk's office to record a new land

[5] Mining is any process by which people receive rewards distributed as part of extending a blockchain. An explanation of the full technical process of "mining" is beyond the scope of this memorandum.

transaction. They are all racing to record the transaction first, and the winner of the race is rewarded with Bitcoin. The people who lose the race run the title search, but do not get paid.

Bitcoin Transactions

Bitcoin is a currency. Thus, like any other currency, people can spend it or trade it for a different currency – such as U.S. dollars or Euros – or for goods and services. And, like any other currency, Bitcoin can only be spent in places where it is accepted. Most merchants in the U.S. do not accept Bitcoin as a form of payment – just as most merchants in the U.S. do not accept Euros, Pesos, or Yen as payment. Some merchants do accept Bitcoin (such as Microsoft, Home Depot, Starbucks, Wholefoods, and AT&T) and Miami has discussed accepting tax payments in Bitcoin. *See* https://www.nytimes.com/2021/03/23/business/dealbook/miami-suarez-crypto.html. In fact, Mayor Suarez of Miami receives a portion of his pay in Bitcoin. *See* https://www.yahoo.com/video/miami-mayor-suarez-still-takes-003846370.html.

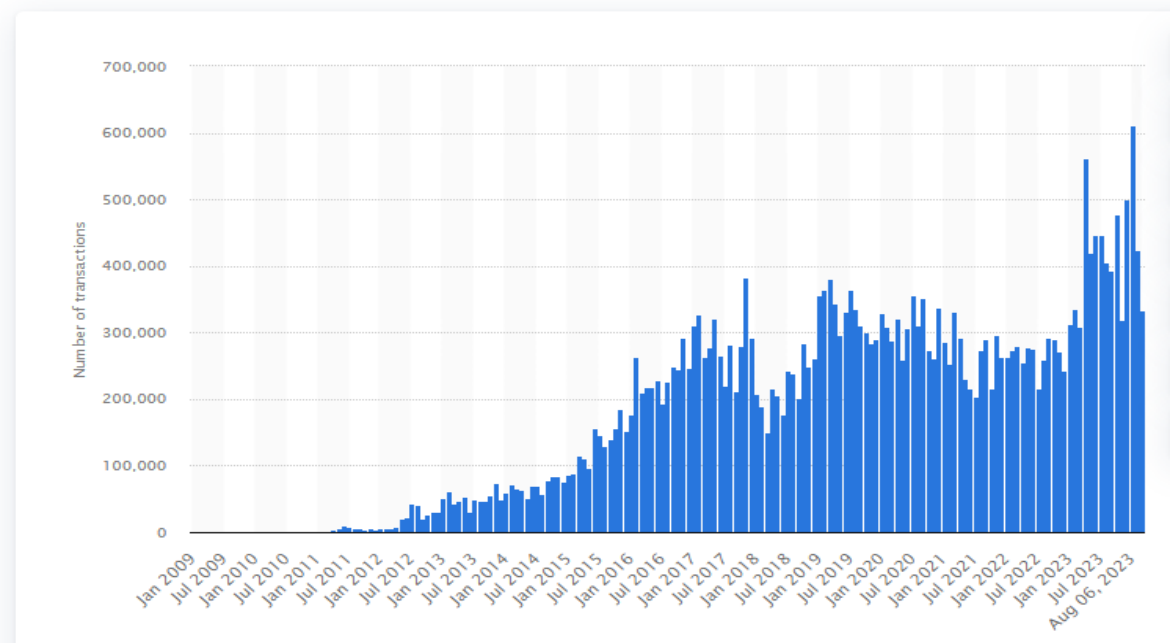
The first notable retail transaction involving the use of Bitcoin to purchase physical goods occurred on May 22, 2010, when someone accepted the offer from Laszio Hanyecz of 10,000 Bitcoin (currently valued at over $250 million) for the delivery of two pizzas from a restaurant in Florida. Also in May 2010, Bitpay was founded to provide services to companies wishing to accept Bitcoin as a form of payment. In October 2012, Bitpay reported having over 1,000 merchants accepting Bitcoin under Bitpay's payment processing system.

As Bitcoin gained acceptance its value increased. From January 2009 to March 2010, Bitcoin essentially had no value. In May 2010, one Bitcoin was worth less than $0.01 – 10,000 Bitcoin purchased two pizzas. By February 2011, a peer-to-peer market for Bitcoin had been created on the Internet and one Bitcoin was worth $1.00. Using this peer-to-peer market, people could acquire Bitcoin by purchasing it rather than having to mine it. The price of Bitcoin began to

rapidly accelerate in 2017. In December 2017, the price of one Bitcoin reached almost $20,000. But by December 2018, the price of one Bitcoin had dropped to $3,300. During the COVID pandemic, the price of one Bitcoin rose to over $60,000, reaching an all-time high of $67,617 on November 9, 2021. The price of one Bitcoin has since declined to around $25,000. Thus, since May 2010, the value of Bitcoin has increased by over 2.5 million percent.

In addition to increasing in value, Bitcoin also increased in usage. From just a few transactions per day in 2011, the number of daily transactions in Bitcoin has increased to approximately 600,000 per day.

Bitcoin Transaction Volume History



Advances in Mining Technology

As Bitcoin rose in value, interest in Bitcoin mining grew substantially, increasing the demand for ever more powerful mining equipment, i.e., computers. As the number and power of mining computers increased, the likelihood decreased that any given miner would receive Bitcoin (by being the first to successfully record the Bitcoin transaction messages). This created a computing arms race. Early in Bitcoin's history, people could successfully mine Bitcoin using just their normal personal home computer. As the competition to mine Bitcoin increased, people began using much more powerful computers in an attempt to record the transactions faster. Home computers were no longer powerful enough to ever win the race and earn Bitcoin.

As more computing power was applied to recording the transactions, the Bitcoin protocol automatically increased the complexity of the process. In order to maintain the 10-minute distribution schedule, the system needed to make sure that recording the transactions always takes

the same amount of time no matter how much computing power is applied. This created a cycle in which ever more powerful computers were used to record ever more complex encoding.

With Bitcoin mining now a specialized industry unto itself, third-party hosting of Bitcoin miners is commonplace. Numerous public companies engage in hosted mining, including: Riot Blockchain, Marathon Digital Holdings, Cipher Mining, Canaan, Hut 8 Mining, Bitfarms, Hive Blockchain Technologies, and Cleanspark. The global cryptocurrency mining market was about $1.9 billion in 2022.

Other Cryptocurrencies

Due to the success of Bitcoin, teams of people began to develop other cryptocurrencies. Tens of thousands of these were developed with varying degrees of success.[6] The creators of these cryptocurrencies modified Bitcoin's design in an attempt to improve upon it. Many focused on making their computer networks and transactions much faster so users can complete transactions faster – like the speed of a credit card transaction approval.

Some alternative cryptocurrencies also use security methods to mine other than Bitcoin's "proof of work." For example, some cryptocurrencies use a different security method to mine called "proof of stake." Under this system owners of the cryptocurrency offer their coins as collateral in exchange for the opportunity to earn fees by validating transactions to update the ledger.[7] Proof of stake is used by the second largest blockchain, known as Ethereum.

[6] A partial list of these may be found at: www.coinmarketcap.com

[7] A detailed description of proof of stake is beyond the scope of this memo.

GREEN BOXES AND GREEN NODES

Green Boxes with Green Nodes

Green United sought to assist customers in mining Bitcoin. In 2018, Green United began selling Green Boxes. A Green Box is a high-powered computer specifically designed to mine Bitcoin.

In addition to being able to mine Bitcoin with their box, purchasers could choose to have their Green Box connect to Green Node software, which was linked to a protocol – a computer program that, when a Green Box mined Bitcoin, distributed Green Rewards to the owner of that Green Box. Thus, customers who purchased a Green Box had the option to receive either Bitcoin or Green Rewards. Furthermore, customers could and sometimes did change their mind about which of those to receive.

Green Rewards

Green United never sold Green Rewards. However, purchasers of Green Boxes and Green Nodes could earn Green Rewards by running their hardware and software. Green Rewards are digital assets like Delta Miles, credit card reward points, and other loyalty programs.[8] They can function like a virtual currency (that is, digital money).[9] Accordingly, Green Rewards are an alternative to Bitcoin, just like the other cryptocurrencies mentioned above. At this time, merchants do not accept Green Rewards as payment. Thus, in order for the owner of Green Rewards to spend

[8] Customers receive updates regarding the status of their Green Rewards, similar to the updates received by participants in other rewards programs.

[9] As noted by the President's Economic Report, virtual currencies are not backed by any government, nor are they backed by any commodity (such as gold) or government-issued currency (such as the dollar); nor are they equity (having a claim on cash flow) or debt (having a claim to a payment of principal and interest). *See* Economic Report of the President (March 20, 2023) https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf.

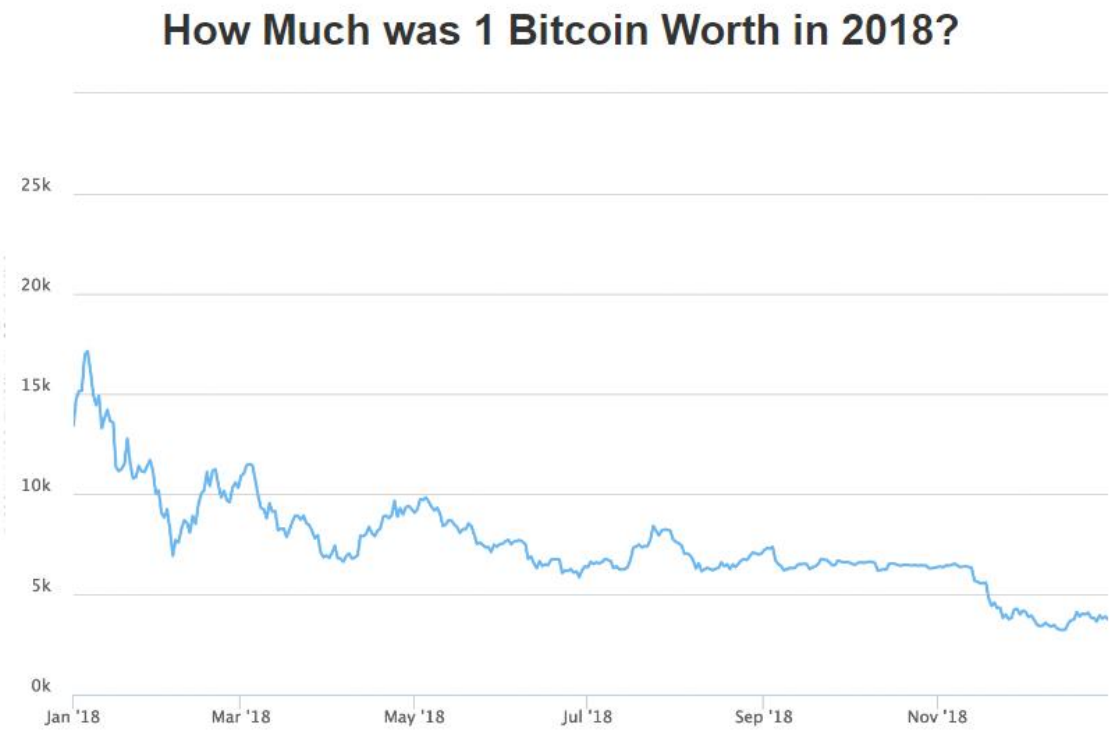
them, they must first exchange them for another currency (e.g., dollars).[10] This is similar to a European tourist exchanging Euros for dollars to spend in stores while vacationing in the U.S. The risks associated with exchanging virtual currencies for fiat currency is explained in § 2.6 of the Contract. The risk that Green Rewards may have no value is explained in § 8.3 of the Contract.

Over the past few years, owners of Green Rewards have successfully traded millions of dollars' worth of Green Rewards for other currencies on two peer-to-peer digital exchanges called Uniswap and Sushiswap. These are internet sites that allow users to exchange virtual currencies directly with each other without the use of intermediaries – much the same way that Airbnb connects people who want to rent a room with people who have rooms to rent. Unlike stock exchanges, digital exchanges exist only on the internet.

Pivoting from Hardware (Green Boxes) to Software (Green Nodes)

In retrospect, 2018 was not a good year for mining Bitcoin. As mentioned above, in December 2017, one Bitcoin was worth almost $20,000. By December 2018, the price of one Bitcoin had dropped to $3,300.

[10] In order for Green Rewards to be exchanged for other currencies, the Green Rewards must first go through a process that makes them compatible with other cryptocurrency technologies. A description of that process is beyond the scope of this memo.



Bitcoin Price during 2018

At the same time, the number of people mining Bitcoin was increasing, driving up the costs of the high-powered computers needed to mine Bitcoin while simultaneously decreasing the odds that any particular such computer would win the race to record a message and receive a reward of Bitcoin. Consequently, by the end of 2018, mining Bitcoin was not profitable.

Green United changed its business model as a result of these economic conditions. In 2019, Green United stopped selling Green Boxes. Purchasers could instead purchase new Green Node software and run it on hardware of their choice. At no time did Green United sell Green Rewards.

The new software was still tied to a protocol that distributed Green Rewards. Unlike the Green Nodes that ran on Green Boxes, however, these new Green Nodes were designed to run on normal personal home computers (like the earliest days of Bitcoin). These new Green Nodes were not designed to be used in connection with mining Bitcoin. As a result, these Green Nodes (1) used

much less electricity than was required to mine Bitcoin; and (2) were not remotely hosted by Green United or any third party.

The Green Nodes solely generated Green Rewards using a system called proof of action. The purchaser of a Green Node could install that software on a home computer. When the purchaser activated the software, it would connect that computer to other computers actively running the Green Node software and make any unused computing power and computer storage from that computer available to the whole network. This structure is referred to as distributed parallel computing. The available computing power and storage can be put to many uses. For example, SETI (Search for Extraterrestrial Intelligence) previously used distributed parallel computing to assist in analyzing the vast amounts of data it collects. Running the new Green Nodes (and thus contributing to the distributed parallel computing network) triggered distribution of Green Rewards by the protocol similar to how the protocol previously distributed Green Rewards based upon the action of a Green Box mining a cryptocurrency. The amount of Green Rewards that Green Node owners receive is based upon the amount of time they make their computing power and storage available to the network.

In exchange for the action of making the unused power and storage capacity of their home computers available to the network, owners of Green Nodes receive Green Rewards.

CONCLUSION

Purchasers of Green Boxes and Green Nodes received computer hardware and software. That is all that Green United sold. If Purchasers chose to run their Green Boxes and/or Green Nodes, they could earn Green Rewards as an incentive.

Purchasers did not receive any stake in Green United, nor did they receive the right to a share in the operational profits of Green United. Thus, based on applicable case law from the Tenth

Circuit and U.S. Supreme Court, Green United's sales of hardware and software fail to meet the legal definition of an "investment contract."

DATED this 25th day of September, 2023.

PARSONS BEHLE AND LATIMER

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CERTIFICATE OF SERVICE

On this 25th day of September 2023, I hereby certify that I electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification and service to all counsel of record.

/s/ Jonathan D. Bletzacker